

MINUTES FOR THE BOARD OF ADJUSTMENT MEETING

June 24, 2011

- I. **ATTENDANCE** - The Chairman called the meeting to order at 1:00 p.m. in the Council Chambers, 200 East Main Street, on June 24, 2011.

Members present were Chairman Louis Stout, James Griggs, Kathryn Moore, Barry Stumbo and Janice Meyer. Members Noel White and Thomas Glover were absent. Others present were Jim Hume, Division of Building Inspection; Chuck Saylor, Division of Engineering; Jim Gallimore, Division of Traffic Engineering; and Rochelle Boland, Department of Law. Staff members in attendance were Bill Saltee, Jim Marx and Wanda Howard.

- II. **APPROVAL OF MINUTES** - The Chair announced that the minutes of the February 25, 2011 meeting had been distributed just prior to the beginning of this meeting, and asked the Board if they would like additional time to consider those minutes. Mr. Saltee replied that the staff had no objection to allowing Board members additional time to review this draft set of minutes, prior to their consideration.

III. **PUBLIC HEARING ON ZONING APPEALS**

Swearing of Witnesses - At this point, Chairman Stout asked all those persons present who would be speaking or offering testimony to stand, raise their right hand and be sworn. He administered the oath to several citizens present.

- A. **Sounding The Agenda** - In order to expedite completion of agenda items, the Chairman sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chairman announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.

- a. **C-2011-29: STEPHEN HOWARD** - appeals for a conditional use permit to establish a special event facility, accessory to a small farm winery, in the Agricultural Rural (A-R) zone, on property located at 3497 North Cleveland Road (Council District 12).

The Staff Recommends: Postponement, for the following reasons:

- a. The appellant has indicated a desire to meet with the staff to get a better understanding of what project revisions could be pursued that would result in a finding that the event facility proposed can be considered as clearly incidental and subordinate to the winery operation that is to be established.
- b. Should the conditional use application be revised, additional time will be required to review whether the proposed event facility (as revised) will adversely impact any surrounding properties.

Representation – Mr. Steven Howard, appellant, was present. He stated that his attorney, Mr. Richard Murphy, was not able to be present today on his behalf due to a burglary and fire in his home. He asked the Board to keep Mr. Murphy in their thoughts. Mr. Howard requested a two-month postponement of his request, as Ms. Knox van Nagell could not be present to speak to this request at the Board's July 29 meeting.

Action – A motion was made by Ms. Meyer, seconded by Ms. Moore, and carried unanimously (Glover and White absent) to postpone to the Board's August meeting **C-2011-29: STEPHEN HOWARD** – an appeal for a conditional use permit to establish a special event facility, accessory to a small farm winery, in the Agricultural Rural (A-R) zone, on property located at 3497 North Cleveland Road.

- b. **AC-2011-36: JACQUELINE ALLEN** - appeals for an administrative review to determine that counseling provided by a Licensed Clinical Social Worker qualifies for consideration as a home occupation; if determined as such, a conditional use permit to provide counseling in a Planned Neighborhood Residential (R-3) zone, on property located at 2304 Stone Garden Lane (Council District 10).

The Staff Recommended: Approval of the Administrative Review portion of this appeal, for the following

reasons:

- a. The definition of the "practice of social work," as defined in KRS 335.020, specifically notes non-medical counseling and psychotherapy as a branch of social work. The appellant, as a Licensed Clinical Social Worker in the state of Kentucky, intends to provide non-medical counseling to her clients.
- b. In a similar 1992 case (same proposed use provided by a Licensed Clinical Social Worker as a home occupation), the Division of Building Inspection had determined that mental health counseling qualified as a professional service, meeting the definition of Home Occupation in Article 1-11, which the Board of Adjustment heard and acted on during a public hearing.

The Staff Recommended: Disapproval of the Conditional Use portion of this appeal, for the following reason:

- a. Based on the fact that the space proposed to be used for professional counseling services does not exist as yet and will only be constructed if this request is granted, a violation of requirement #5 for approval of a home occupation as a conditional use (i.e., that no external alteration of the dwelling is made to accommodate the home occupation) would occur. The staff therefore cannot support this request.

Representation – The appellant was not present for this appeal.

Mr. Marx reported that the staff had received a letter from the appellant withdrawing this application.

2. No Discussion Items - The Chair asked if there were any other agenda items where no discussion is needed...that is, (a) The staff had recommended approval of the appeal and related plan(s), (b) The appellant concurred with the staff's recommendations. Appellant waived oral presentation, but may submit written evidence for the record, (c) No one present objected to the Board acting on the matter at this time without further discussion. For any such item, the Board proceeded to take action.

- a. **V-2011-38: CASTINE PROPERTIES – LEXINGTON TWO, LLC** – appeals for a variance to reduce the already reduced setback from a residential zone for an overhead door from 60 feet to 56 feet in a Light Industrial (I-1) zone, on property located at 981 Contract Street (Council District 1).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the area. The proposed building will be similar in appearance to other commercial buildings in the immediate area, and the door openings will not be oriented toward the residential area that borders the north side of the property. A 7' tall berm and landscape buffer is to be provided along the rear property line that adjoins a residential zone.
- b. The relatively narrow width of the lot has placed some constraints on how a long and narrow building with individual storage units can be sited on the subject property.
- c. Strict adherence to the previously granted variance (which reduced the residential setback from 100' to 60') would result in a loss of at least one storage unit, or possibly would force the appellant to construct units with a less desirable width.
- d. The circumstances surrounding this variance request have arisen from the appellant's desire to use the property as efficiently as possible, and are not the result of any prior actions intended to circumvent the requirements of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

1. The storage building shall be constructed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. The final design of the parking layout and circulation shall be subject to review and approval by the Division of Traffic Engineering.
4. The 7' tall berm/retaining wall at the rear of the property and tree plantings along the rear property line shall be arranged to provide a full perimeter landscape buffer that complies with Article 18-3(a)(1)3 of the Zoning Ordinance.
5. A minimum of six trees at approximate 25' intervals shall be planted along the rear property line.

Representation – Mr. Jeff Duncan and Mr. David Thompson were present on behalf of the appellant. Mr. Duncan and Mr. Thompson indicated that they had reviewed the conditions for approval and would

agree to abide by them.

Questions – Mr. Griggs asked if the pedestrian door and the overhead doors could be reversed on the front of the end unit, so that this variance would not be necessary. Mr. Duncan replied that this design change would be costly to the owner. He said that the wall with the electrical wiring would be on the opposite side as that planned, and this would change the entire layout.

Mr. Griggs said that with seven units, there is an odd number regardless, meaning that one would be an end unit in any event. Mr. Duncan said that this change would have plumbing design changes impacting the foundation and openings. He said that this had been thought about by the appellant. He understood Mr. Griggs' point, but said that the change would be costly, regardless. Mr. Griggs said that he did not understand why this change could not be made, since there was not an even number of units. Mr. Duncan replied that there would be 30' of additional electrical power cable, added plumbing costs, and that this had been initially designed for a new type of construction known as "insulated concrete forms". Now it is proposed for a more typical type of construction, and the end unit in question grew 4' in length, which resulted in the need for an additional variance. Mr. Griggs said that he was more concerned about the additional impact to area property owners near this building. Mr. Thompson said that they were also concerned about their residential neighbors.

Chairman Stout asked if this additional construction would have an adverse impact to the neighbors. Mr. Duncan replied in the negative. He said that the industrial property owners are concerned about the neighborhood, and they help pay for their newsletters, and keep up their industrial properties so as to prevent any impact to the area's residents.

Action – A motion was made by Mr. Stumbo, and seconded by Ms. Meyer (Glover and White absent) to approve **V-2011-38: CASTINE PROPERTIES – LEXINGTON TWO, LLC** – an appeal for a variance to reduce the already reduced setback from a residential zone for an overhead door from 60 feet to 56 feet in a Light Industrial (I-1) zone, on property located at 981 Contract Street, for the reasons provided by the staff, and subject to the five conditions recommended by the staff.

The votes on the motion for approval were as follows:

Ayes: Meyer, Moore, Stout, Stumbo

Nays: Griggs

Absent: Glover, White

The motion passed, 4-1.

- b. **V-2011-39: LYNN PEDIGO** - appeals for a variance to reduce the required rear setback from 10 feet to 5 feet in order to construct a garage addition, in a Single Family Residential (R-1C) zone, on property located at 1182 Indian Mound Road (Council District 5).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The garage addition will be nearly 30' away from the rear lot line, and there is no aspect of the connection to the residence that might be disturbing to that adjoining property.
- b. The location of the existing detached garage, which complies with the required 1.5' setback for accessory buildings, is a special circumstance that contributes to justifying a rear yard reduction solely for the purpose of allowing that structure to remain where currently located when it is expanded and connected to the residence.
- c. Strict application of the Zoning Ordinance would mandate that the existing garage be modified to be 5' further away from the rear lot line, which does not appear to be warranted given the location of the addition and connection to the residence.
- d. The circumstances surrounding this variance request are not the result of actions taken by the appellant or current property owner. The detached garage was built in 2006, and the current owner purchased the property in 2008. Given that sequence of events, it is clear that there has not been an effort to circumvent a requirement of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

1. The addition shall be constructed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.

Representation – Ms. Lynn Pedigo was present as the appellant. She indicated that she had reviewed the conditions recommended for approval and would agree to abide by them.

Action – A motion was made by Ms. Meyer, seconded by Mr. Griggs, and carried unanimously (Glover and White absent) to approve **V-2011-39: LYNN PEDIGO** – an appeal for a variance to reduce the required rear setback from 10 feet to 5 feet in order to construct a garage addition, in a Single Family Residential (R-1C) zone, on property located at 1182 Indian Mound Road, for the reasons provided by the staff and subject to the two conditions recommended by the staff.

- c. **V-2011-40: RICH NORDLING / C.Y. OF LEXINGTON, INC.** - appeals for a variance to increase the allowable height of a wall in the required rear yard from 8 feet to 10 feet in a Highway Service Business (B-3) zone, on property located at 3100 Wall Street (Council District 10).

The Staff Recommends: Approval of a height variance to 9', for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare nor alter the character of the general vicinity. The proposed retaining wall will be located along the exit-ramp from New Circle Road to Harrodsburg Road, will not block sight distance for vehicles, and it will only be visible to those vehicles utilizing the exit-ramp.
- b. The site's almost 20-foot grade change from Wall Street to the New Circle Road exit-ramp; and the fact that the adjoining local streets and exit-ramp are already in place, which prevents their grade from being altered, are special circumstances that contribute to justifying the requested variance.
- c. Strict application of the Zoning Ordinance would prevent the appellant from constructing a surface parking lot at the same finished floor elevation as the hotel, or would require significantly more cut and fill on the site, or possibly prevent compliance with the Americans with Disabilities Act.
- d. The circumstances surrounding this requested variance have arisen as a result of the topography of the site, and are not the result of any actions taken by the appellant.
- e. In order to construct the retaining wall as depicted on the submitted site plan and profile, a one-foot variance to the allowable height will suffice.

This recommendation of approval is made subject to the following conditions:

1. The retaining wall shall be constructed in accordance with the submitted application and site plan, or as amended by the Planning Commission.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. All required landscaping materials associated with vehicular use area screening and/or arterial screening shall be installed per Article 18 of the Zoning Ordinance.

Representation – Mr. Rory Kahly, EA Partners, and Mr. Rich Nordling, appellant, were present. Mr. Nordling stated that they had reviewed the conditions recommended for approval and would agree to abide by them.

Questions – Ms. Meyer asked if the appellant was agreeable to the height variance of up to 9' (not the 10' requested in the application). Mr. Nordling replied in the affirmative, noting that their site plan had indicated a wall of 8'-9' in height, and that it was not to be higher than that.

Mr. Griggs asked if there would be a fence installed on the top of the wall. Mr. Nordling replied affirmatively.

Action – A motion was made by Ms. Moore, seconded by Mr. Stumbo, and carried unanimously (Glover and White absent) to approve **V-2011-40: RICH NORDLING / C.Y. OF LEXINGTON, INC.** – an appeal for a variance to increase the allowable height of a wall in the required rear yard from 8 feet to 9 feet in a Highway Service Business (B-3) zone, on property located at 3100 Wall Street, for the reasons provided by the staff, and subject to the three conditions recommended by the staff.

- d. **V-2011-41: RML CONSTRUCTION** - appeals for a variance to reduce the required front setback from 20 feet to 5 feet for additional off-street parking spaces in a Planned Neighborhood Residential (R-3) zone, on property located at 4161 Victoria Way (Council District 9).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested variance should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The reduced front yard will only apply to the location of 20 parking spaces at the northeast and northwest corners of the development, and a full landscape buffer will be maintained between the parking spaces and the Victoria Way sidewalk.
- b. The long and narrow shape of the property, and its location adjacent to a portion of an apartment complex on one side, and a single family residential subdivision on the other, are special circumstances that contribute to justifying a front yard reduction just for off-street parking.
- c. Strict application of the Zoning Ordinance would increase the likelihood of on-street parking taking place routinely on a collector street, near the intersection of another collector street (Mooncoin Way), which would not be ideal.
- d. The appellant is making a reasonable effort to accommodate different development issues related to buffering and parking demands, which should not be construed as an attempt to circumvent a requirement of the Zoning Ordinance.
- e. The increased buffer yard that would result, adjacent to a new single family residential subdivision, would be of much greater benefit to this developing neighborhood than the strict application of the Zoning Ordinance for these 20 spaces.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with the submitted application and site plan, or as amended by the Planning Commission.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. A full landscape buffer shall be provided for all parking spaces along the frontage of Victoria Way, in accordance with the provisions of Article 18 of the Zoning Ordinance.
4. A note reflecting the action of the Board shall be placed on the Final Development Plan for the subject property.

Representation – Mr. Rory Kahly, EA Partners, was present on behalf of the appellant. He indicated that the appellant had reviewed the conditions for approval and would agree to abide by them.

Action – A motion was made by Mr. Griggs, seconded by Ms. Meyer, and carried unanimously (Glover and White absent) to approve **V-2011-41: RML CONSTRUCTION** – an appeal for a variance to reduce the required front setback from 20 feet to 5 feet for additional off-street parking spaces in a Planned Neighborhood Residential (R-3) zone, on property located at 4161 Victoria Way, for the reasons provided by the staff and subject to the four conditions recommended by the staff.

- e. **V-2011-42: MIKE KERWIN HOMES** - appeals for a variance to reduce the required side setback from 8 feet to 3.5 feet for a home addition in a Single Family Residential (R-1C) zone, on property located at 256 Shady Lane (Council District 4).

The Staff Recommends: Approval, for the following reasons:

- a. A side yard reduction to 3.5' should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. Only one corner of the addition will come that close to the side property line, and portions of the proposed addition will exceed the required 8' side yard.
- b. The location and orientation of the existing residence, tightly constrained on this portion of the property by a 40' platted building line, is a special circumstance that contributes to justifying a side yard reduction at this location.
- c. Strict application of the Zoning Ordinance would force the appellant to reduce the width of the addition by several feet, or to find an alternate location for the addition. Neither option is sufficiently viable to totally eliminate the need for a variance, especially given the need to average the front yard for this property improvement.
- d. The appellant is pursuing a home improvement in an area of their property that appears to be the only suitable location for a modest addition, and there is no indication of any intent to circumvent a requirement of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

1. The addition shall be constructed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. Landscaping as depicted on the submitted site plan shall be augmented by additional plantings, in the form of shrubs and at least one small tree, along the 32' section of the addition that will be

closest to the side property line. Planting details shall be described in a landscaping plan subject to review and approval by the Division of Building Inspection.

Representation – Mr. Robbie Jones was present on behalf of the appellant. He indicated that the appellant had reviewed the conditions for approval and would agree to abide by them.

Chairman Stout stated that the Board had received one anonymous letter of opposition for this request, which was circulated to the Board members. After review of the letter, it was entered into the record.

Action – A motion was made by Mr. Stumbo, seconded by Ms. Meyer, and carried unanimously (Glover and White absent) to approve **V-2011-42: MIKE KERWIN HOMES** – an appeal for a variance to reduce the required side setback from 8 feet to 3.5 feet for a home addition in a Single Family Residential (R-1C) zone, on property located at 256 Shady Lane, for the reasons provided by the staff and subject to the three conditions recommended by the staff.

- f. **CV-2011-35: SRG PROPERTIES** - appeals for a conditional use permit for a drive-through facility in a Professional Office (P-1) zone; and variances to eliminate the required zone-to-zone landscape screening along the western property line, perimeter landscape screening adjacent to the New Circle Road on-ramp, and Vehicular Use Area (VUA) screening along the eastern side of the property, on a portion of 858 Malabu Drive (Council District 4).

The Staff Recommends: Approval of the requested conditional use permit, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The property to the north is currently being used for office purposes, and the site is bordered to the east by a 70' wide permanent drainage easement and in the other directions by Tates Creek Road, and an on-ramp to New Circle Road. Although residences and residential zoning are present to the west of the site, the residences will be over 160 linear feet distant from the proposed drive-through facility. Adequate stacking space for vehicles has been proposed, and the final design will be subject to review and approval by the Division of Traffic Engineering, prior to construction.
- b. All necessary public facilities and services are available and adequate for the proposed use.

The Staff Recommends: Approval of the requested variances for landscaping, for the following reasons:

- a. Granting the requested variances should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The proposed retaining wall, the existing vegetation, and the topographic differences between the bulk of the site and the adjoining roadway will provide a sufficient buffer for the subject property. If the existing vegetation is removed in the floodplain area of this property, a suitable landscaping plan has been offered to mitigate that possibility. This work in the floodplain will not adversely affect public health, safety or welfare.
- b. Approval of the variances will not result in an unreasonable circumvention of the Zoning Ordinance. The purpose of the ordinance related to landscaping is to provide appropriate screening, which will be provided on the property for this new development, although in a different form than required by the Ordinance.
- c. The special circumstances that apply to the subject property that serve to justify the landscape variances proposed are its steep slope, the fact that it is bounded by two arterial roads, the constraints of the existing floodplain and the existing vegetation located on the subject property.
- d. Strict application of the requirements of the Zoning Ordinance would create an unnecessary hardship to the applicant, and would likely lead to loss of parking and the functionality of the circulation around the new office building proposed for the subject site.
- e. The circumstances surrounding this request are not the result of actions taken by the applicant since the adoption of the Zoning Ordinance in 1969.

These recommendations for approval are made subject to the following conditions:

1. The drive-through facility shall be constructed in accordance with the submitted application and site plan, or as amended by the Planning Commission.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. The final design of the drive-through facility shall be subject to review and approval by the Division of Traffic Engineering.
4. Storm water management is to be provided in compliance with the Division of Engineering Storm Water Manual.

5. All existing trees over 4" in caliper at DBH shall be maintained within the permanent drainage easement surrounding Bates Creek, which is along the eastern property line, unless diseased or dead as determined by the Urban Forester. An additional five (5) trees shall be planted between the proposed retaining wall and Bates Creek Road in order to mitigate the appearance of the wall. American sycamores are to be the species utilized, since they would be located within the bounds of the special flood hazard area (floodplain).
6. The landscaping plan shown as part of the submitted site elevations (from Bates Creek Road) shall be implemented to the greatest extent feasible, if honeysuckle is removed along the frontage of the road.
7. A note shall be placed on the Development Plan for the property indicating the variances that have been approved for this property.
8. Prior to any construction, the applicant shall obtain a building permit and all applicable Federal, State, and Local approvals associated with the identified floodplain.
9. Any trees within the New Circle Road right-of-way are not to be removed by the applicant, except as required by the Kentucky Department of Highways or other appropriate governmental entity.

Representation – Mr. Nick Nicholson, attorney for Stoll, Keenon & Ogden, was present representing the appellant. Mr. Nicholson indicated that the appellant had reviewed the five conditions for approval and would agree to abide by them.

Action – A motion was made by Ms. Meyer, seconded by Mr. Stumbo, and carried unanimously (Glover and White absent) to approve **CV-2011-35: SRG PROPERTIES** – an appeal for a conditional use permit for a drive-through facility in a Professional Office (P-1) zone; and variances to eliminate the required zone-to-zone landscape screening along the western property line, perimeter landscape screening adjacent to the New Circle Road on-ramp, and Vehicular Use Area (VUA) screening along the eastern side of the property, on a portion of 858 Malabu Drive, as recommended by the staff, and subject to the nine conditions recommended by the staff.

- g. **C-2011-33: FELLOWSHIP CHURCH OF LEXINGTON** - appeals for a conditional use permit to establish a church in one suite of an existing building, in a Highway Service Business (B-3) zone, on property located at 2551 Richmond Road (Council District 7).

The Staff Recommends: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The suite to be occupied for this church congregation is surrounded by a mix of retail and office uses, many of which are generally not open during the times that church activities will be taking place. A number of off-street parking spaces are conveniently located near the subject suite, sufficient to accommodate a small church with fewer than 100 members.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The church shall be established in accordance with the submitted application and site plan.
2. An occupancy permit shall be obtained from the Division of Building Inspection prior to beginning church activities.

Representation – Rev. David Barbour, Pastor of Fellowship Christian Church, was present. He indicated that he had reviewed the conditions recommended for approval and would agree to abide by them. However, he asked for a clarification of condition #2, as the church already held an Occupancy Permit for office uses at this location. He also asked if condition #2 would impact their plans to conduct Bible study classes at this location.

Discussion – Mr. Hume said that Building Inspection would prefer that the church wait to hold Bible study classes at this location until a new Certificate of Occupancy was issued. He had no objection to Rev. Barbour occupying the church office. Mr. Saltee stated that the staff agreed that the church office use could continue, and that the two related conditions the staff recommended in approving this appeal would be sufficient to govern its occupancy.

Action – A motion was made by Ms. Moore, seconded by Mr. Griggs, and carried unanimously (Glover and White absent) to approve **C-2011-33: FELLOWSHIP CHURCH OF LEXINGTON** – an appeal for a conditional use permit to establish a church in one suite of an existing building, in a Highway Service Business (B-3) zone, on property located at 2551 Richmond Road, for the reasons provided by the staff and subject to the two conditions recommended by the staff.

- h. **ACV-2011-37: EAST HICKMAN BAPTIST CHURCH** - appeals for an administrative review to determine that the proposed 2,400 square-foot multi-purpose building does not violate the 10,000 square-foot limit for church facilities; a conditional use permit to construct the addition; and variances to reduce the required rear and side setbacks from 25 feet to 16 feet, in the Agricultural Rural (A-R) zone, on property located at 6418 Bates Creek Road (Council District 12).

The Staff Recommends: Approval of the requested administrative appeal, for the following reasons:

- a. All of the existing church facilities on the subject property, which do total more than 10,000 square feet in floor area, were established prior to January 26, 1995. The new use requiring a conditional use will have a total of 2,400 square feet, far below the 10,000 square foot limitation set by the Zoning Ordinance for most conditional uses in the A-R zone established after January 26, 1995.
- b. It has consistently been the interpretation of the Board that Article 8-21(d)19 of the Zoning Ordinance allows an additional 10,000 square feet of floor area for structures beyond that which was established prior to January 26, 1995.

The Staff Recommends: Approval of a conditional use permit for a 2,400 square-foot multi-purpose building, for the following reasons:

- a. A church has been established at this location for over 180 years, and there is no aspect of the construction or use of the new building that is anticipated to be disturbing to the surrounding agricultural properties. The immediately surrounding properties do not have any agricultural improvements of any kind that might be impacted, and an existing tree stand exists on the adjoining farm to buffer this new site improvement.
- b. All necessary public facilities and services are available and adequate for the proposed use, and private sewage treatment will be provided as required by the Fayette County Health Department.

The Staff Recommends: Approval of variances reducing the required side and rear yards from 25' to 16', for the following reasons:

- a. Granting the requested variances should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The specific area where the side and rear yard setbacks are to be reduced to 16' is over 300' back from Bates Creek Road, and there are no improvements on the immediately adjoining agricultural properties in that area that might be impacted by these modest setback reductions.
- b. The manner in which the existing church facilities have been developed over the years on this non-conforming lot, to a large extent prior to the adoption of the current zoning requirements, is a special circumstance that contributes to justifying the requested setback reductions.
- c. Strict application of the Zoning Ordinance would likely result in the church having to place the multi-purpose building at an undesirable location that would interfere with established parking areas and traffic aisles, and would possibly involve extensive, and probably expensive, building code changes for the church's sanctuary.
- d. The circumstances surrounding the requested variances relate to the church's desire to place their new building at the least disruptive location on the property, and there is no indication of any intent to circumvent a requirement of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

1. The addition shall be constructed in accordance with the submitted application and site plan.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. A storm water management plan shall be implemented in accordance with the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
4. Sewage disposal shall be provided in compliance with the requirements of the Fayette County Health Department, subject to Health Department approval.

Representation – Mr. Mike Buffin, Chairman of the Trustees of East Hickman Baptist Church, was present for this appeal. He stated that he had reviewed the conditions recommended for approval and that the church would agree to abide by them.

Action – A motion was made by Mr. Stumbo, seconded by Ms. Meyer, and carried unanimously to approve **ACV-2011-37: EAST HICKMAN BAPTIST CHURCH** – an appeal for an administrative review to determine that the proposed 2,400 square-foot multi-purpose building does not violate the 10,000 square-foot limit for church facilities; a conditional use permit to construct the addition; and variances to reduce the required rear and side setbacks from 25 feet to 16 feet, in the Agricultural

Rural (A-R) zone, on property located at 6418 Bates Creek Road, for the reasons provided by the staff and subject to the conditions set forth by the staff.

- B. **Transcript or Witnesses** - The Chair will announce that any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- C. **Variance Appeals** - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and
- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

D. **Conditional Use Appeals**

1. **CV-2011-34: SHILOH BAPTIST CHURCH** - appeals for a conditional use permit for an additional parking lot in a Planned Neighborhood Residential (R-3) zone; and a variance to reduce the required front setback from 20 feet to 3 feet, on property located at 227 & 233 East Fifth Street (Council District 1).

The Staff Recommends: Approval of the requested conditional use permit, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties, provided that a front yard setback of at least 10' is maintained. The church is a well established use in this area, and the two lots to be improved for off-street parking are conveniently located immediately to the west of the existing church building. The parking lot will be landscaped in accordance with the provisions of Article 18 of the Zoning Ordinance, and existing traffic flows through the church property can be maintained.
- b. All necessary public facilities and services are available and adequate for the proposed use.

The Staff Recommends: Approval of a front yard variance from 20' to 10', for the following reasons:

- a. A front yard reduction from 20' to 10', strictly for the purpose of providing additional parking spaces for the church, should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The church building immediately to the east of the subject lots sits about 10' back from the street sidewalk, and there are several other buildings in the immediate area that have similar or lesser front yard setbacks.
- b. The location of the two lots that comprise the subject property, generally surrounded by a mix of uses that do not comply with a 20' front yard requirement, is reasonably considered as a special circumstance that contributes to justifying a front yard reduction for the subject lots.
- c. Although strict compliance with a 20' front yard is possible at this location, it would result in the loss of needed parking spaces and would also render the new parking lot somewhat out of character with the immediately surrounding uses.
- d. With this application, the appellant is making a reasonable effort to maximize the availability of parking in close proximity to their church, with no intent to circumvent a requirement of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

1. The parking lot shall be established in accordance with a revised site plan that (a) eliminates at least three parking spaces (and possibly up to six as determined to be necessary by the Division of Traffic Engineering) that were to be located closest to East Fifth Street; and (b) indicates a

- minimum setback of 10' to be provided for all spaces.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
 3. The parking lot shall be paved, with spaces delineated, and landscaped in accordance with the provisions of Articles 16 and 18 of the Zoning Ordinance.
 4. The final design of the parking lot shall be subject to review and approval by the Division of Traffic Engineering.
 5. A storm water management plan shall be implemented in accordance with the requirements of the adopted Engineering Manuals, subject to acceptance by the Division of Engineering.
 6. Any pole lighting for the parking lot shall be of a shoebox (or similar) design, with light shielded and directed downward to prevent disturbances to any of the surrounding properties.

Representation – Mr. Robert Baldwin, civil engineer, and Mr. Charles Edwards, member of Shiloh Baptist Church, were present on behalf of the appellant.

Objectors – Mr. Charles Carpenter & Mrs. Rachel Carpenter, residents of Silver Maple Way, were present to object to this request. Ms. Carpenter said that they were also here on behalf of several of their neighbors, and she presented, and submitted for the record a number of e-mails she had received about this request.

Ms. Carpenter said that the church owns a large area around the existing parking lot, and that the parking lot would encroach upon the sidewalk and green space along East Fifth Street. She wondered why the church would not use some of its other property for the proposed parking lot, instead of the two properties in question – both of which need the requested variance. She said that there may be other uses planned for this land; but if not, why not just develop this new parking farther back into the property.

Ms. Carpenter said that, when it rains, there is a lot of water that drains from the existing parking lot into East Fifth Street. She asked that there be a landscape buffer along the edge of the parking lot to catch some of the drainage from the parking lot.

Chairman Stout asked if there was not a drain present along the street to catch the water. Ms. Carpenter replied that the nearest storm water inlet was some distance down the street from this location, and that in very heavy rains, the water actually flows across East Fifth Street, and flows down Silver Maple Lane to an inlet past their house (the third from the corner). She said that there is also a pooling problem for some of the storm water here. She said that their neighborhood association is trying to build some rain gardens to address the storm water problems, as many of her neighbors have sump pump discharges from their basements.

Ms. Carpenter said that the variance would allow the parking to come forward to the street. When church services are held, there is considerable on-street parking, so she and Mr. Carpenter did not object to additional parking being provided. Their neighbors felt the same way; however, they also did not want the feeling of being “walled-in” by cars if this new parking lot is constructed. She said that the cars being so close to the sidewalk would create this feeling among the pedestrians along East Fifth Street.

Ms. Carpenter said that when church is not in session, there will be an expanse of asphalt, so some landscaping is needed between the parking lot and the sidewalk. She said that this neighborhood is very walkable and she hoped that it would remain that way if this construction is allowed.

Ms. Carpenter wondered if this would be a temporary use; and, if not, what a “conditional use” meant. Mr. Marx responded that some uses are allowable under the Zoning Ordinance in Lexington-Fayette County, but are first subject to review and approval by this Board. Not all conditional uses are temporary uses – some are permanent.

Ms. Carpenter said that many of her neighbors are concerned about the drainage issues in the area, as their Association was actually applying for grants to seek improvement in the neighborhood. Chairman Stout said that he had visited the site, but did not see the extent of the drainage problem, as he thought that there would be a storm inlet in this vicinity to capture the runoff. He did understand the Carpenters' concern. He asked if the sidewalk would be removed if the parking was approved as shown on their application. Ms. Carpenter replied that the sidewalk will remain, but today there is a “buffer of green” in

place that would be removed if the parking is permitted to be installed. She said that buffer helps the pedestrians using the sidewalk.

Chairman Stout wondered which would be worse, easing of the parking problem for the church, or keeping the grassed area that is there today. Mr. Carpenter replied that the application requests only a 3' spacing from the parking to the sidewalk, and that is the crux of their concern, as that would not be much of a buffer. Mr. Marx said that the staff recommendation is that the parking only extend as close as 10' from the sidewalk. Mr. Carpenter replied that would alleviate much of their worry about the lack of a buffer area.

Ms. Carpenter said that some of her neighbors were concerned about the lack of parking, and that it was not much of a concern to her. Chairman Stout said that he had been in the neighborhood when parking was very crowded, and asked if it would be acceptable to her if the staff recommendation were followed in this case. She replied that some of the other applications on today's agenda had a condition requiring a landscape buffer. She said she did not see this requirement on this recommendation, and wondered if it could be clearly stated as such. She thought that the landscape buffer and a 10' setback for the parking would alleviate much of the neighborhood's concerns.

Mr. Hume stated that condition #3, as proposed, would require the landscape buffer to be installed between the parking spaces and the sidewalk. Mr. Griggs asked what type of landscape material would be required in this buffer area. Mr. Hume replied that the Ordinance requires either shrubs or fencing and trees to be planted every 40'. He said that there were landscaping options available to the appellant, but a sight barrier up to 3' in height is required. The staff displayed the applicable section of Article 18-3(a)(2)(a)(2) on the overhead projector, outlining these options.

Ms. Meyer asked if there was any type of communication or meeting between the applicant and the neighborhood association regarding this request. Mr. Edwards replied that there was no such meeting.

Appellant's Presentation - Mr. Baldwin referred to the site plan, which was displayed on the overhead projector, and said that the front three parking spaces would be removed to meet the 10' front setback recommended. He said that there would be a storm water basin in that 10' area to capture the drainage, which hopefully, would also improve the current drainage situation from the existing parking lot and reduce some of the current runoff. He was confident that, with the 10' setback, this would alleviate all of the concerns expressed by the Carpenters and by the neighborhood.

Discussion – Chairman Stout asked what type of landscaping is anticipated to be planted in the 10' setback area. Mr. Baldwin replied that shrubs 3' high are planned, perhaps including burning bush, with which he was familiar from his work in Winchester. He said that he could discuss this with the Carpenters and the church to see what they liked; but that in any event, the new landscaping would also include trees in addition to the hedge.

Chairman Stout asked how storm water improvement could be accomplished here to help the existing drainage problem where water is travelling across the street. Mr. Saylor replied that if there is a documented downstream problem, the appellant will need to make sure that the added runoff can be handled by the system. If not, then there may be a need for the applicant to provide additional storm water detention on their site. Depending upon the nature of the downstream problem, the appellant may be required to provide even more detention on their property. He said that, with the worst case scenario, the existing problems will not be made any worse; and with the best case scenario, the existing condition will be improved. Chairman Stout asked if there is a drain in the street to collect the existing runoff. Mr. Saylor replied that he was unsure, as he was not familiar with this area. Chairman Stout hoped that there could be a drain installed at the edge of the new parking lot, if there were an existing drain that would provide a connection to the storm sewer system.

Ms. Meyer asked the Carpenters if their comfort level was increased with these proposed changes. She also asked if the neighborhood would like to have an interaction with the appellant in order to work out the details associated with this site improvement. Ms. Carpenter replied that the 10' setback would be a significant improvement, in that the cars would no longer be "in reach" of a pedestrian walking by on the street's sidewalk. She said that the residents on Rand Avenue would also need some buffering; but given the proposed landscaping discussed along East Fifth Street, they would be comfortable reporting this outcome back to the neighborhood association.

Chairman Stout said that there may not be many landscaping improvements proposed to the rear of the property. Ms. Carpenter said that the site plan did propose some landscaping along the rear of the new parking lot, which would at least be an improvement.

Mr. Griggs asked why the parking needed to be closer than 20' to East Fifth Street. Mr. Edwards responded that the church hoped to build a Lifeway Center on the balance of their property someday, and that they wished to save the remaining property for that purpose. Mr. Griggs asked if that is why the church was only proposing these two properties for the parking lot improvement. Mr. Edwards replied affirmatively. Mr. Griggs asked if additional parking would be required at that time. Mr. Edwards was not certain that would be the case. Mr. Griggs said that if the opponents were comfortable with a 10' setback for this new parking area, with the provision of a new landscaping buffer, knowing that the church will work with the Division of Engineering on the storm drainage problem, then he could live with this request.

Ms. Meyer asked if the rear of the parking lot accessed into the neighborhood. Mr. Edwards replied affirmatively, but said that the one access point on the rear of the church property is gated, and is normally closed, with the exception of allowing traffic flow for funerals. Ms. Meyer asked that the parking lot shown on the aerial photograph be shown once again on the overhead projector, to answer this question.

Chairman Stout thanked the Carpenters for attending, and stating their concerns about this request.

Action – A motion was made by Mr. Stumbo, seconded by Mr. Griggs, and carried unanimously (Glover and White absent) to approve **CV-2011-34: SHILOH BAPTIST CHURCH** – an appeal for a conditional use permit for an additional parking lot in a Planned Neighborhood Residential (R-3) zone; and a variance to reduce the required front setback from 20 feet to 10 feet, on property located at 227 & 233 East Fifth Street, for the reasons provided by the staff, and subject to the conditions recommended by the staff.

Chairman Stout stated that the appellant should take heed to the neighbors' issues, and that by doing so in the future, it could alleviate any problems for the Board.

IV. **BOARD ITEMS** - The Chair said that any item a Board member wishes to present would be heard at this time.

Mr. Stumbo announced that Mr. Griggs had been reappointed to the Board, and congratulated him for agreeing to another four years of service.

V. **STAFF ITEMS** - The Chair will announce that any items a Staff member wishes to present will be heard at this time.

- A. House Bill 55 Training Opportunity – Mr. Sallee announced that there would be an APA audio-conference on Wednesday, June 29, 2011 at 4:00 p.m. in the Division of Planning conference room. The title of this conference is "Planning Law Review" and will count toward 1.5 hours of House Bill training credits for Board of Adjustment members, as well as for the staff.

VI. **NEXT MEETING DATE** - The Chair announced that the next meeting date will be July 29, 2011.

VII. **ADJOURNMENT** - There being no further business, the Chair declared the meeting adjourned at 1:54 p.m.

Louis Stout, Chairman

James Griggs, Secretary